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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 02 2009
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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will grant the motion and affirm its dismissal of the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The AAO agreed with the director's finding that the petitioner had not provided enough information about her intended work in the United States to permit a finding that such work merited a national interest waiver.

On motion, the petitioner submits arguments from counsel, a statement from the petitioner and a letter from a witness.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

We will not repeat our entire appellate decision here, but some details are important to give context to the petitioner's new submissions and arguments on motion. The petitioner filed the petition on August 18, 2006. She claimed past employment at the World Bank, the Bolivian Embassy to the United States, a consultancy at the Bolivian Ministry of Finance, and earlier posts in journalism and academia. In a statement accompanying the petition, the petitioner stated:

> I am convinced that my professional background could help in designing poverty alleviation programs and effective cooperation projects. Setting up productive projects for small and medium entrepreneurs in poor and rural areas, will diminish the influence of threatening left oriented ideologies, and above all, will pull the Bolivian society away from the illegal circuit of drugs, corruption and armed conflict.

Counsel stated:

> [The petitioner] is among the most gifted, industrious and earnest scholars in the area of foreign affairs, specializing in the area of poverty reduction and bilateral relations between Bolivia and the United States. . . .
>
> [The petitioner's] high level background – her Bolivian ancestry, her education and career in Mexico and the United States, together puts her in a unique position where she has been able to directly contribute to the United States interest in significant ways, politically and economically. She has been intensively involved in the field of economics, poverty reduction and foreign relations. This is clear from her achievements in the diplomatic ranks in Bolivia to her most recent appointment in 2004 as Counselor to the Bolivian Embassy to the United States, one of the highest diplomatic assignments for the country. Her abilities and professional skills as an economic policy analyst and in charge of the relations with the United States Congress are highly in demand at the time being. The results of her work have already helped in the strengthening of ties between the United States and South America. [The petitioner] has already established relations with different think tanks and academic centers, she participated . . . in numerous conferences [and] international meetings, and has served as the official government representative on numerous occasions. . . .
>
> Having a knowledgeable diplomat and economist, like [the petitioner], is going to help maintain solid ties between Bolivia and the United States.

In our previous discussion of counsel's statement, we stated:

> Counsel devoted considerable space to a discussion of the petitioner's past activities in jobs she no longer holds, but counsel did not specify what, exactly, the petitioner intends to do in the United States . . . [or] how the petitioner intends to reach [her stated] goals. Expertise in economics and international relations does not, by itself, serve the national interest; an alien does not merit a waiver simply by possessing such a trait. Rather, it is how such expertise is applied that determines the benefit to the United States. The petition must show that she has realistic opportunities to reduce poverty, improve international relations, and otherwise serve the national interest of the United States.

The initial submission included a letter from [redacted] identified as Director of Political Science at the Latin American and Caribbean Center at Florida Atlantic University. Prof. [redacted] had previously served on the faculty of the Bolivian Catholic University alongside the petitioner. [redacted] stated: "Some of [the petitioner's] academic research on poverty and governance has provided fresh challenges to other colleagues. . . . Her study [of] citizen perceptions is one of the first of its kind and has been a basic step for other investigations related to economic public policy in Bolivia."

On October 29, 2007, the director issued a request for evidence (RFE). In the RFE, the director advised the petitioner: "The record contains little information regarding your actual proposed employment. . . . [Y]ou do not clearly address what you will be doing in the United States." The director noted the petitioner's submission of letters from three potential employers, but also noted that these employers were in three different fields.

In our prior dismissal notice, we had this to say about the petitioner's response to the RFE:

> In response, the petitioner submitted several new exhibits, along with an explanatory letter from counsel. Nowhere in this seven-page letter did counsel directly address the fairly basic question of what, exactly, the petitioner intends to do in the United States. Counsel argued repeatedly that the petitioner is an expert in various diplomatic and economic areas, but being an expert is not an occupation in and of itself. The question remains as to how the petitioner intends to apply that expertise.

We acknowledged the petitioner's submission of a vaguely-worded courtesy letter from the Carter Center in Atlanta, Georgia, acknowledging the petitioner's interest in a position there. We also noted that, when the director asked the petitioner for information about the three potential employment opportunities mentioned earlier, the petitioner responded with information about yet another prospective employer. We stated: "The above letter does not shed further light on the petitioner's intended activities in the United States. Instead, it further muddies the waters surrounding this issue."

In denying the petition on March 10, 2008, the director stated: "the petitioner still does not clearly address what she will be doing in the United States." On appeal, counsel stated that the petitioner has attracted "the interest of various organizations and institutions," and asserted: "It is not necessary for her *at this time* to be specifically employed in a qualifying position" (counsel's emphasis). Counsel also contended that the director "is unnecessarily focusing on a narrow aspect of this case. . . . The bigger picture of [the petition] is the extent to which her past and ongoing work has impacted the field." In the dismissal notice, we found: "It is simply not enough to assert that, given the petitioner's background, she is sure to find, eventually, a position that will, in some way yet to be determined, serve the national interest."

The petitioner's appeal included a second letter from [redacted], who, on this occasion, identified himself as "the Managing Partner of Newlink Research, a private research firm that conducts surveys

throughout Latin America and the Caribbean." essentially repeated his first letter, adding a section that read, in part:

> On the basis of her experience, training, education and overall background, Newlink Research hired her to assist with a variety of projects. She is currently assigned to a project our firm has with the Mexican government. Over the course of the past two years, [the petitioner] has worked on the implementation of the Democratic Security Plan in the Democratic Security. This plan was conceived by Newlink and has been credited with significantly reducing the crime rate in that country. Newlink was fortunate to count on the experience of [the petitioner] during the design phase of the project and throughout the several phases of the implementation.

Regarding this letter, we stated:

> [I]t is significant to note that the petitioner did not mention Newlink on her *curriculum vitae* or in her introductory statement in which she detailed her work experience. The petitioner also omitted any mention of Newlink on Form ETA-750B, which instructed her to "List all jobs held during the last three (3) years." [redacted] likewise did not mention Newlink in his first letter on the petitioner's behalf, even though that letter was written July 10, 2006, during "the past two years" that preceded the new December 2007 letter.

The petitioner also submitted a letter from [redacted], formerly the Bolivian Ambassador to the United States, who stated: "In the first half of the year 2007, [the petitioner's] work with Newlink Group was mainly focused [on] democracy in Bolivia and democratic security for Central American Countries. Since July of that year she has been working on a Mexico project." In the dismissal notice, we stated:

> Like [redacted] does not specify the nature of the petitioner's "work with Newlink Group." [redacted] implies that this work began in 2007, which would explain its total omission from the initial filing in 2006. Nevertheless, it is significant that the director, in the October 2007 RFE, specifically noted the lack of "information regarding [the petitioner's] actual proposed employment." The petitioner's December 2007 response to the RFE contained no mention of Newlink whatsoever, although it is now claimed that she had been working at Newlink for most of 2007. Counsel does not explain why the petitioner withheld the information about Newlink even after the director specifically asked about the petitioner's employment after she left the Bolivian Embassy in 2006.

We concluded:

> The petitioner's latest submission on appeal does not resolve the concerns raised by the director. The assertion that the petitioner is an experienced and well-connected expert in

> Bolivian-U.S. relations cannot compensate for the absence of coherent evidence to show what, exactly, the petitioner intends to do in the United States, let alone that it is in the national interest for the petitioner do so instead of a qualified United States worker.

On motion, counsel states: "The main issue in both the denial and the [dismissal] of the appeal is that the Officer and the AAO officer were not sure what [the petitioner] would be doing in the US to utilize her skills. First, I wish to say that we gave ample evidence in this regard. We [documented] several job offers." The job offers, however, were in several different fields; the prospective employers were a financial organization, a law firm, and a newspaper. Documenting three widely divergent job offers does not clarify the petitioner's intended avenue of employment.

Counsel states that the petitioner "gave ample evidence of what [her] skills can be used for," but this, once again, does not answer the question at hand. We have previously made it clear that vague, general declarations of expertise are not sufficient to qualify the petitioner for the waiver. On motion, counsel responds with a vague, general declaration about the petitioner's expertise.

The petitioner states that she was not authorized to work for United States employers (as opposed to the Bolivian Embassy) until three months after she filed the petition, and therefore "it wasn't possible for me to accept any job offer or get involved in any formal working relationship." It seems that the petitioner, here, fails to comprehend the basis for denial and dismissal. The issue was not the petitioner's employment status at the time she filed the petition, but rather the apparent lack of any firm plan for what she would do once she eventually was able to work in the United States. The inability to immediately accept a job offer would not have prevented employers from making such offers, subject to qualifying immigration status. The director did not deny the petition because the petitioner lacked a firm job offer. Rather, the director found that the petitioner had not satisfactorily explained what she intended to do or how it would benefit the United States. When asked for information about the first three job offers she described, the petitioner responded by implying that a fourth job offer existed (although the record does not show that the Carter Center ever expressed further interest in employing the petitioner).

Counsel contends that "to require information regarding what [the petitioner] will do in the US after approval flies in the face of the statute." We disagree, noting that the statutory language requires aliens to "prospectively benefit" the United States. The petitioner need not produce a specific job offer, but it cannot suffice to claim a generalized skill set and imply that she is still deciding between working as a financial consultant or as a newspaper columnist. We also will not conclude that anyone possessing a diverse skill set must presumptively qualify for the waiver by virtue of those skills.

While counsel correctly acknowledges that the petitioner must be eligible as of the petition's filing date, she must also remain eligible after that date. The existence of a revocation mechanism, established by section 205 of the Act, 8 U.S.C. § 1155, for aliens who cease to be eligible shows that our interest in the petitioner's work does not and cannot end at the filing date. Eligibility at the time of filing is an important factor, no doubt, but not the only factor. (We stress that this argument is not a concession that the petitioner was eligible as of the filing date.)

The petitioner states that she "was hired by Newlink Group [in] January 2007." She describes Newlink Group as "a strategic communications agency working with US, Hispanic and Latin American clients across the Americas. Among other areas, Newlink has . . . political and research branches that produce research pieces, design political campaigns and elaborate strategic public policies for its clients."

The petitioner submits a new letter from who states that he has assembled "a team of high profile professionals under the name of New World Advisors," intended "to build new economic and political bridges that will help to over mount the current economic situation. . . . [The petitioner] joined New World Advisors in June 2008. At this time, besides some managerial tasks she is working on governmental relations projects as well as on political and economic risk analysis for our clients." [redacted] asserted that the petitioner's expertise "is extremely valuable" "[f]or a firm in its first steps."

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Here, nothing the petitioner has submitted on motion demonstrates that the petition was approvable at the time of filing in August 2006. Apart from this issue, the petitioner has not established how it is in the national interest to ensure that she, rather than another qualified worker, fills the positions at Newlink and New World Advisors. Witnesses have simply indicated that the petitioner's background has suited her well for those positions.

Also, we note that the director, in the RFE, had asked specific questions about the petitioner's intended future work, and the petitioner, at that time, did not adequately address those questions. Because the petitioner already had the opportunity to clarify these issues, it is too late for the petitioner to attempt to do so now. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988) (evidence requested prior to the decision will not be considered when submitted for the first time on appeal).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The petitioner has not shown that she qualified for the waiver at the time she filed the petition, or that the previous appellate decision was in error based on the evidence available at the time. Accordingly, we affirm our prior dismissal of the appeal.

ORDER: The AAO's decision of January 6, 2009 is affirmed. The petition is denied.